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**U.S. District Court  
DISTRICT OF ARIZONA (Phoenix Division)  
CIVIL DOCKET FOR CASE #: 2:11-cv-00593-JAT  
Internal Use Only**

Best Western International Incorporated v. A&S Hospitality  
LLC et al  
Assigned to: Judge James A Teilborg  
Demand: \$58,000  
Cause: 15:1121 Trademark Infringement

Date Filed: 03/30/2011  
Jury Demand: None  
Nature of Suit: 840 Trademark  
Jurisdiction: Federal Question

**Plaintiff**

**Best Western International  
Incorporated**  
*an Arizona non-profit corporation*

19 TMS  
pgs. 5-7

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V.

**Defendant**

**A&S Hospitality LLC**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

BEST WESTERN INTERNATIONAL,  
INC., an Arizona non-profit corporation,

Plaintiff,

v.

A&S HOSPITALITY, L.L.C., a Georgia  
limited liability corporation; PADDY  
RAO ATMURI, an individual,

Defendants.

No.

Verified Complaint for Federal Trademark  
Infringement, False Designation of Origin,  
Federal Trademark Dilution, Breach of  
Contract, Open Account, Post Termination  
Use of Trademarks, Unfair Competition, State  
Trademark Dilution, and Common Law  
Trademark Infringement

Plaintiff, Best Western International, Inc. ("Best Western"), for its Complaint  
against Defendants A&S Hospitality, a Georgia limited liability corporation, and Paddy Rao  
Atmuri, an individual, alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for breach of contract and federal, state and common  
law claims arising from Defendants' refusal to cease and desist their unauthorized use of Best

1 Western's trade name, trademarks, service marks, logos, and other similar identifying  
2 symbols (the "Best Western Marks").

3 2. Defendants have also failed to pay amounts owing to Best Western on an  
4 open account, in violation of common law and in breach of contract.

5  
6 **THE PARTIES, JURISDICTION, AND VENUE**

7 3. Plaintiff Best Western is a non-profit corporation organized under the  
8 laws of the State of Arizona with its headquarters located in Phoenix, Arizona.

9 4. Defendant A&S Hospitality, L.L.C. ("Defendant A&S") is a Georgia  
10 corporation with its principal place of business in Georgia.

11 5. Defendant Paddy Rao Atmuri ("Defendant Atmuri") is an individual, is  
12 believed to be a resident of Georgia, and is the Voting Member for Defendant A&S.

13 6. This Court has jurisdiction over the Lanham Act claim set forth below by  
14 virtue of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a), and over the other claims set  
15 forth below by virtue of 28 U.S.C. §§ 1367 and 1338(b). Further, there are no matters  
16 pending between the parties in any other jurisdiction regarding Defendants' Lanham Act  
17 violations; Best Western is an Arizona non-profit corporation with its principal place of  
18 business in Phoenix, and its witnesses are either located in Phoenix or available in Phoenix;  
19 and Defendants executed a contract that contained a forum selection clause requiring all  
20 disputes arising from that contract be resolved by an Arizona state or federal court.  
21 Defendants' trademark violation impacts the goodwill and reputation of Best Western and all  
22 of its members, resulting in a significant, direct harm and effect on Best Western, an  
23 American corporation engaged in commerce in the United States and worldwide. Defendants  
24  
25

1 contractually agreed to liquidated damages in the event that they continued to use Best  
2 Western Marks after the termination of their membership. Defendants continued to use the  
3 marks of Best Western, a business name representing quality and reputation that is sold for  
4 use by others, and, therefore, wrongfully capitalized on the goodwill and reputation of Best  
5 Western. If the Best Western name is diluted and the reputation tainted, all Best Western  
6 members and customers are adversely impacted.

7  
8           7. Venue in this judicial district and the exercise of personal jurisdiction  
9 over Defendants by this Court are proper pursuant to 28 U.S.C. § 1391(b) and (c) and  
10 because, among other reasons, the Defendants expressly contractually agreed to litigate all  
11 disputes with Best Western arising from or related to the Best Western's Membership  
12 Application and Agreement executed by Defendants on June 3, 2009 or any relationship  
13 between the parties, in the Arizona state or federal court located in Maricopa County,  
14 Arizona. Further, Defendants have caused events to occur, and injuries to result, in the State  
15 of Arizona, and Defendants aimed their conduct at Best Western, knowing that Best Western  
16 is located in Arizona, and harming Best Western in Arizona. A copy of the Membership  
17 Agreement is attached as Exhibit 1.  
18  
19

### 20                           GENERAL ALLEGATIONS

21           8. Best Western operates as a non-profit membership organization  
22 consisting of individually owned and operated hotels (i.e., its members). The rights and  
23 obligations of Best Western's members are determined by the membership and are set forth in  
24 the Membership Agreement, Best Western's Bylaws & Articles, Best Western's Rules &  
25 Regulations, and other Best Western "Regulatory Documents" as that term is defined in Best

1 Western's Bylaws (the "Regulatory Documents").

2           9. Among other things, Best Western provides its members with a  
3 worldwide reservation system and worldwide marketing campaigns, as well as an option to  
4 participate in collective purchasing of hotel equipment, furnishings, and supplies (the "Best  
5 Western Services").  
6

7           10. Upon membership, each Best Western member is authorized to use the  
8 Best Western trademarks and other intellectual property (the "Best Western Marks") in  
9 connection with its hotel pursuant to a limited, non-exclusive license (the "Best Western  
10 License") set forth in the Membership Agreement. See Membership Agreement at ¶¶ 1, 19-  
11 26.  
12

13           11. In exchange for receiving Best Western Services and use of the Best  
14 Western License, Best Western members are obligated to, among other things, pay annual  
15 dues, membership fees, and other assessments. The membership fees are due December 1 of  
16 each year and are billed in monthly installments over the course of the following year to  
17 accommodate members. Annual dues are charged in August of each year. All other dues,  
18 fees and assessments are billed monthly. Pursuant to Best Western Bylaws Article II, Section  
19 7, if a member resigns or is terminated, fees and dues for the remainder of the fiscal year will  
20 become immediately due and payable.  
21

22           12. Best Western first adopted "Best Western" as its trade name in 1947.  
23 Shortly thereafter, Best Western adopted and began using "Best Western" as a trademark  
24 identifying hotel services provided by member hotels that were affiliated with Best Western.  
25 Best Western has continuously and extensively promoted its trade name and trademark in

1 interstate commerce since 1947. As a result of this extensive promotion, the trade name and  
2 trademark have become famous among consumers as a source-identifying symbol.

3           13. Since 1959, Best Western has registered with the United States Patent  
4 and Trademark Office ("USPTO") various trademarks, service marks, and collective  
5 membership marks. On April 14, 1959, the Best Western logo was first registered as a  
6 service mark by the USPTO under Registration No. 677,103. Best Western has developed the  
7 Best Western Marks at great expense over the past decades.

8           14. Best Western owns the following registrations for Best Western Marks  
9 and the marks referenced in these registrations:  
10

11                   (a) a Best Western logo was registered as a collective membership  
12 mark by the USPTO on June 8, 1971, under Registration No. 914,812, which was registered  
13 to Western Motels, Inc., but assigned to Best Western International, Inc. in 1979, and is still  
14 active;  
15

16                   (b) a Best Western logo was registered as a service mark by the  
17 USPTO on June 8, 1971, under Registration No. 914,813, which was registered to Western  
18 Motels, Inc., but assigned to Best Western International, Inc. in 1979, and is still active;  
19

20                   (c) a Best Western logo was registered as a service mark by the  
21 USPTO on August 30, 1977, under Registration No. 1,072,360;

22                   (d) a Best Western logo was registered as a collective membership  
23 mark by the USPTO on September 27, 1977, under Registration No. 1,074,300 to Best  
24 Western, Inc. and assigned to Best Western International, Inc. in 1979, and is still active;  
25

1 (e) the Best Western word mark was registered by the USPTO as a  
2 service mark on February 3, 1987, under Registration No. 1,427,735;

3 (f) the Best Western word mark was registered by the USPTO as a  
4 collective service mark on March 10, 1987, under Registration No. 1,432,431;

5 (g) the Best Western crown logo design was registered by the USPTO  
6 as a service mark on December 6, 1988, under Registration No. 1,515,712;

7 (h) Best Western's current logo was registered by the USPTO as a  
8 trademark on June 20, 1995, under Registration No. 1,900,620;

9 (i) Best Western's current logo was registered by the USPTO as a  
10 service mark on November 7, 1995, as Registration No. 1,933,830;

11 (j) Best Western's current logo was registered by the USPTO as a  
12 service mark on November 25, 1997, as Registration No. 2,116,079;

13 (k) Best Western's current logo was registered by the USPTO as a  
14 service mark on October 14, 1997, as Registration No. 2,105,546;

15 (l) Best Western's current logo was registered by the USPTO as a  
16 service mark on March 3, 1998, as Registration No. 2,140,332;

17 (m) the Best Western globe and pillow logo design was registered by  
18 the USPTO as a service mark on December 24, 2002, as Registration No. 2,665,955;

19 (n) The BEST WESTERN word mark was registered by the USPTO  
20 as a service mark on August 3, 2004, under Registration No. 2,869,617;

21 (o) the BESTWESTERN.COM word mark was registered by the  
22 USPTO as a service mark on April 19, 2005, under Registration Nos. 3,107,814, 3,080,655  
23  
24  
25

1 and 3,083,667;

2 (p) BW was registered by the USPTO as a service mark on November  
3 29, 2005, under Registration No. 3,020,526; and

4 (q) Best Western has registered a variety of other designs and phrases  
5 as service marks in connection with the trade of hotel and motel lodging, many of which  
6 incorporate the words "BEST WESTERN."  
7

8 15. All of the registrations described above are currently in full force and  
9 effect, unrevoked, and uncanceled. Several of the above listed federal registrations for the  
10 Best Western word mark and logo have become incontestable under 15 U.S.C. § 1065.

11 16. The Best Western Marks are inherently distinctive and possess strong  
12 secondary meaning.  
13

14 17. The Membership Agreement and the Regulatory Documents establish the  
15 minimum standard scores that each member must meet in order to achieve and maintain  
16 membership. As a result, consumers worldwide associate Best Western Marks with high  
17 quality in the hotel/motel industry.  
18

19 18. A key element of Best Western's branding effort is the display of the  
20 Best Western Marks on the premises of member hotels through signs, publications, and other  
21 public displays.

22 19. Upon default by a member of certain of its obligations to Best Western,  
23 including obligations set forth in the Membership Agreement and the Regulatory Documents,  
24 the Best Western Board of Directors may terminate the membership and the Best Western  
25 License.



1           20. Within 15 days following the termination of membership, the former  
2 member must cease and desist from using, and remove from public view, all Best Western  
3 Marks and all references to Best Western. The former member is also required to cease and  
4 desist from using any item that is similar to the Best Western Marks in spelling, sound,  
5 appearance, or in any other manner.  
6

7                           **DEFENDANTS' BEST WESTERN MEMBERSHIP**

8           21. The property at issue here is the hotel formerly known as the Best  
9 Western Atlanta Northwest Hotel, located at 1200 Winchester Parkway SE, Smyrna, Georgia  
10 30080, which is referenced in Best Western's records as property T-11207 (the "Hotel").  
11

12           22. Defendants executed the Membership Agreement on June 3, 2009.

13           23. Defendants designated Defendant Atmuri as the Voting Member for the  
14 Hotel.

15           24. As the Voting Member, Defendant Atmuri agreed to and became bound  
16 by the terms of the Membership Agreement and the Regulatory Documents, and personally  
17 shares joint liability for Defendant A&S's obligations arising under the Membership  
18 Agreement.  
19

20           25. Defendants consented to the jurisdiction of this Court and to venue lying  
21 in this District.

22           26. Through the Membership Agreement and the Regulatory Documents,  
23 Defendants agreed to timely pay all fees, dues, charges, and assessments imposed generally  
24 on the membership by the board of Best Western and to promptly pay the costs of all goods or  
25 services provided by or ordered through Best Western. Additionally, Defendants further

1 agreed that past due amounts would bear interest at the rate of one and one-half percent  
2 (1.5%) per month from the date due until paid, provided that such interest charges would in  
3 no way authorize or excuse late payments or limit Best Western's rights and remedies against  
4 them.

5  
6 27. Upon execution of the Membership Agreement, Best Western granted  
7 Defendants the Best Western License, thereby allowing them to use the Best Western Marks  
8 in connection with the Hotel, subject to the terms of the Best Western License, and only for  
9 the limited term of the Best Western License.

10  
11 28. Defendants agreed that termination of the Best Western membership  
12 would result in termination of the Best Western License. Defendants agreed to "remove from  
13 public view and cease using" all Best Western Marks and all other references to Best Western  
14 within 15 days of the date of termination. See Membership Agreement at ¶ 22.

15  
16 29. Defendants also agreed that, upon termination of the Best Western  
17 License, they would "actively take steps as may be necessary to cause the cessation of all  
18 advertising and distribution of promotional material containing any Best Western Symbol."  
19 See Membership Agreement at ¶ 22.

20 30. The Regulatory Documents also state that:

21 Upon termination or cancellation of membership, the former Best  
22 Western member *shall remove the Best Western sign . . . . When*  
23 *the sign cabinet is removed, it must be destroyed or modified so*  
24 *that the top of the cabinet has no curvilinear features . . . .* The  
cost of removal of Best Western identification upon termination  
shall be the responsibility of the former member.

25 See Rules and Regulations, Section 300.6, attached here as Exhibit 2.

1                   31. The Regulatory Documents contain the Best Western International, Inc.  
2 Domain Name Policy, attached here as Exhibit 3. The Domain Name Policy permits a  
3 licensee to register and use an internet domain name containing the term "bestwestern" to  
4 advertise its hotel property only during the membership:  
5

6                   Upon termination of a Best Western Licensee's [Membership]  
7 Agreement, the former Licensee shall immediately transfer all  
8 Best Western Domains to Best Western. In the event that a Best  
9 Western Licensee fails to comply with this requirement, all legal  
10 and administrative costs associated with the transfer or other  
11 disposition of such domains, including attorneys' fees and costs,  
12 shall be reimbursed by the former Best Western Licensee in  
13 accordance with Best Western's Regulatory Documents (as that  
14 term is defined in Best Western's Bylaws).

15                   32. During their membership, Defendants registered the following domain  
16 name: [www.atlantahotelbestwestern.com](http://www.atlantahotelbestwestern.com).  
17

18                   33. Because Defendants failed to make the necessary payments on their open  
19 account, Defendants' Best Western membership was terminated on November 30, 2010. Best  
20 Western advised Defendants that they must discontinue use of the Best Western Marks no  
21 later than December 15, 2010. A copy of the November 30, 2010 letter is attached as Exhibit  
22 4.  
23

24                   34. On or about December 29, 2010, in the ordinary course of its business,  
25 Best Western sent its representative to the Hotel. As part of the representative's regular  
duties, he took photographs of signs displayed in connection with the operation of the Hotel.  
See Exhibit 5 attached hereto. These photographs show that, notwithstanding Best Western's  
Membership Agreement and post-termination direction, Defendants failed to remove signage  
and items containing the Best Western Marks in connection with the operation of the Hotel,

1 which is a clear violation of the parties' agreement and federal and state trademark laws,  
2 among other things.

3           35. Contrary to the obligations set forth in the Membership Agreement and  
4 federal and state law, as of February 18, 2011, advertisements from third-party websites for  
5 Defendants' hotel property continued to utilize the Best Western name and Best Western  
6 Marks, and to state that the Hotel is a Best Western member. Samples of these  
7 advertisements are attached as Exhibit 6.

8  
9           36. Contrary to the obligations set forth in the Regulatory Documents, as of  
10 February 22, 2011, a photograph of the Defendants' Hotel at [www.expedia.com](http://www.expedia.com) and  
11 [www.tripadvisor.com](http://www.tripadvisor.com) showed that Defendants had not *removed* the sign cabinet but had  
12 merely covered the cabinet with a sign stating "Western Inn & Suites." See Exhibit 7.  
13 attached hereto.

14  
15           37. Contrary to the obligations set forth in the Regulatory Documents, as of  
16 February 22, 2011, Defendants had not transferred the [atlantahotelbestwestern.com](http://atlantahotelbestwestern.com) name to  
17 Best Western, but instead continued to use that domain name to advertise the Hotel, now  
18 referred to as the "Western Inn & Suites."

19  
20           38. On or about March 16, 2011, in the ordinary course of its business, Best  
21 Western again sent its representative to the Hotel. As part of the representative's regular  
22 duties, he took photographs of signs displayed in connection with the operation of the Hotel.  
23 See Exhibit 8 attached hereto. Those photographs show that Defendants have merely covered  
24 the main Hotel sign with a tarp referring to the Hotel as the "Western Inn & Suites." See  
25 Exhibit 8. Additionally, the photographs show that, rather than removing the curvilinear sign

1 cabinet, Defendants merely covered it with another sign bearing the name "Western Inn &  
2 Suites." See Exhibit 8. A large roadside sign still bears the Best Western marks and  
3 represents that the Hotel is a Best Western member. See Exhibit 8. The Best Western  
4 representative also observed that Department of Transportation signs on the highway still  
5 display Best Western marks advertising the Hotel.  
6

7 39. Defendants' failure to "remove from public view and cease using" all  
8 Best Western Marks and all other references to Best Western in connection with  
9 advertisements for the Hotel is likely to lead the travelling public to believe that the Hotel is a  
10 Best Western property, and constitutes a clear breach of the Membership Agreement.  
11

12 40. Defendants' failure to "actively take steps as may be necessary to cause  
13 the cessation of all advertising and distribution of promotional material containing any Best  
14 Western Symbol" is likely to lead the travelling public to believe that the Hotel is a Best  
15 Western property, and constitutes a clear breach of the Membership Agreement.  
16

17 41. Defendants' failure to remove all sign cabinets at the property and  
18 continued use of a domain name with the term "bestwestern" constitutes a clear breach of the  
19 Membership Agreement.  
20

21 42. Defendants' misuse of Best Western Marks beyond December 15, 2010  
22 also constitutes a breach of the parties' Membership Agreement and the limited License  
23 contained therein.  
24

25 43. In January 2011, Best Western wrote to Defendants and demanded  
payment of the open account balance (which, as of January 1, 2011, was \$55,545.42) and  
advised that they must cease and desist from their continued unauthorized use of the Best

1 Western Marks—including use of the Marks and the Best Western name on websites,  
2 advertising, and in “any way whatsoever.” Best Western warned Defendants that  
3 noncompliance with the terms of the Membership Agreement and trademark laws would  
4 result in litigation. A copy of the notice is attached as Exhibit 9.

5  
6 44. On February 23, 2011, Best Western again wrote to Defendants and  
7 demanded payment of the open account balance (which, as of February 1, 2011, was  
8 \$57,129.00) and advised that Defendants must cease and desist from their continued  
9 unauthorized use of the Best Western Marks—including use of the Marks and the Best  
10 Western name on websites and in advertising. A copy of that letter is attached as Exhibit 10.  
11 In the letter, Best Western also demanded that Defendants: cease using the domain name  
12 www.atlantahotelbestwestern.com; cease using the name “Western Inn & Suites;” and cease  
13 using—and destroy—the Best Western curvilinear sign cabinets. See Exhibit 10.  
14

15 **DEFENDANTS’ INTENTIONAL AND UNLAWFUL USE OF**  
16 **THE BEST WESTERN MARKS**

17 45. After Defendants’ Best Western membership terminated, Defendants  
18 were required to remove all Best Western Marks and the Best Western name from the  
19 property and any advertising or third-party websites, but Defendants have not.

20 46. Defendants’ use of the name “Western Inn & Suites” is an intentional  
21 attempt to confuse the public and wrongfully trade on the goodwill of the Best Western  
22 Marks.  
23

24 47. Defendants’ use of the term “bestwestern” in its internet domain name is  
25 or was an intentional attempt to confuse the public and wrongfully trade on the goodwill of

1 the Best Western Marks.

2 48. Best Western has been, and continues to be, injured by Defendants'  
3 conduct and their intentional attempt to mislead the public into believing that the substandard  
4 property is affiliated with Best Western.

5 49. For example, a member of the public wrote a Google review of the Hotel,  
6 which was listed as the "Best Western Atlanta Northwest Hotel," stating that it was "one of  
7 the nasties[t] hotels" he and his wife "had ever stayed in." A copy of this review is attached  
8 as Exhibit 11.

9 50. Defendants' intentional and unlawful use of the Best Western Marks in  
10 connection with the Hotel likely caused confusion for the public and caused members of the  
11 public to stay at the Hotel with the mistaken belief that the Hotel was a Best Western hotel.  
12 Defendants' misconduct also likely diverted to Defendants the benefit of and/or damaged the  
13 reputation and goodwill that Best Western built through the years.

14 **DEFENDANTS' REFUSAL TO PAY AMOUNTS**  
15 **OWING TO BEST WESTERN**

16 51. Best Western has fully performed all of its obligations under the  
17 Membership Agreement.

18 52. As of March 1, 2011, there remains due and owing, by Defendants to  
19 Best Western, the sum of \$58,490.15, representing certain fees and other charges imposed on  
20 Defendants as Best Western members. See Invoices dated September 1, 2010 to March 1,  
21 2011, attached hereto as Exhibit 12.

1           53. Defendants have refused and continue to refuse to pay to Best Western  
2 the amounts due and owing.

3                           **COUNT I – BREACH OF CONTRACT**

4           54. Best Western incorporates by reference the allegations contained in  
5 paragraphs 1 through 53 above as though fully set forth herein.

6           55. Defendants have refused and continue to refuse to pay to Best Western  
7 the amounts due and owing as required by the Membership Agreement.

8           56. Pursuant to the express terms of the Membership Agreement, interest has  
9 accrued and continues to accrue on the unpaid amounts at the rate of one and one-half percent  
10 (1.5%) per month.

11           57. As of March 1, 2011, there remains due and owing, by Defendants to  
12 Best Western, the sum of \$58,490.15.

13           58. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. §§ 12-341  
14 and 12-341.01, Best Western is entitled to recover the attorneys' fees and costs incurred in  
15 pursuing this action.

16                           **COUNT II – OPEN ACCOUNT**

17           59. Best Western incorporates by reference the allegations contained in  
18 paragraphs 1 through 58 above as though fully set forth herein.

19           60. At Defendants' request, Best Western rendered services and provided  
20 supplies on an open account, Defendants agreed to pay for such services and supplies on an  
21 open account, and Defendants agreed to pay for such services and supplies when due in  
22 accordance with the Membership Agreement.  
23  
24  
25



1           61. Defendants failed to pay for the services and supplies that Best Western  
2 has provided. As of March 1, 2011, there remains due and owing, by Defendants to Best  
3 Western, the sum of \$58,490.15.

4           62. Pursuant to the express terms of the Membership Agreement, interest has  
5 accrued and continues to accrue on this sum at the rate of one and one-half percent (1.5%) per  
6 month until paid in full.

7           63. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. §§ 12-341  
8 and 12-341.01, Best Western is entitled to recover the attorneys' fees and costs incurred in  
9 pursuing this action.  
10

11           **COUNT III – BREACH OF CONTRACT; POST TERMINATION USE OF**  
12                                   **TRADEMARKS**

13           64. Best Western incorporates by reference the allegations contained in  
14 paragraphs 1 through 63 as though fully set forth herein.

15           65. Pursuant to the express terms of the Membership Agreement, Defendants  
16 were obligated to remove from public view, and to cease all use of, the Best Western Marks  
17 in connection with the Hotel within fifteen (15) days after termination. This prohibition  
18 included making any representation, whether direct or indirect, indicating that the Hotel is  
19 affiliated with Best Western.  
20

21           66. Despite Best Western's demand that Defendants discontinue their use of  
22 the Best Western Marks in connection with the Hotel, Defendants continued to use the Best  
23 Western Marks in connection with the Hotel.  
24  
25

1           67. Paragraph 24 of the Membership Agreement provides for liquidated  
2 damages where, as here, Defendants continue to use the Best Western Marks in connection  
3 with the Hotel for more than fifteen (15) days following the termination of their Best Western  
4 membership and the Best Western License. The amount of liquidated damages is equal to  
5 fifteen percent (15%) of the mean of the Hotel's room rates per day, multiplied by the total  
6 number of rooms for every day that Defendants continue to use the Best Western Marks  
7 beyond the fifteen-day period.  
8

9           68. Beginning December 16, 2010, Defendants owe \$925.41 per day for each  
10 day they were unlawfully using the Best Western Marks. The liquidated damages  
11 calculations are based on the Hotel's information regarding daily rates and total number of  
12 rooms. A copy of the Marketing Statistics Report showing the Average Daily Rates (ADR)  
13 for the Hotel and the Best Western Account Information Computer Screen, showing the  
14 number of units for the Hotel is attached as Exhibit 13.  
15

16           69. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. § 12-341.01,  
17 Best Western is entitled to recover its attorneys' fees and costs incurred in this action.  
18

19           **COUNT IV – FEDERAL TRADEMARK INFRINGEMENT**  
20           **(15 U.S.C. § 1114(1))**

21           70. Best Western incorporates by reference the allegations contained in  
22 paragraphs 1 through 69 as though fully set forth herein.

23           71. Defendants have failed to cease and desist from the use of the federally  
24 registered Best Western Marks in connection with the Hotel, including the use of the name  
25 "Western Inn & Suites" and the atlantahotelbestwestern.com domain name.

1           72. Defendants' actions complained of have at all times been without Best  
2 Western's consent. Defendants' acts constitute infringement of the federally registered Best  
3 Western Marks in violation of 15 U.S.C. § 1114(1).

4           73. Defendants' acts complained of have damaged Best Western irreparably.  
5 Monetary damages will not afford full and adequate relief for all of Best Western's injuries  
6 resulting from Defendants' conduct. Such injuries include harm to Best Western's goodwill  
7 and reputation in the marketplace that money cannot sufficiently compensate. Best Western  
8 is, therefore, requesting and entitled to a preliminary and permanent injunction restraining and  
9 enjoining defendants and their respective officers, members, agents, servants, employees, and  
10 any other persons or entities acting on behalf of or in concert with Defendants, from using the  
11 Best Western Marks or any colorable imitation thereof, in connection with the promotion,  
12 advertisement, and sale of goods and services without Best Western's authorization, pursuant  
13 to 15 U.S.C. § 1116.

14           74. Defendants' infringement is willful. Accordingly, Best Western is  
15 entitled to recover all damages sustained as a result of the unlawful conduct, including three  
16 times Defendant's profits and Best Western's damages, as well as the costs of this suit and  
17 attorneys' fees, pursuant to 15 U.S.C. § 1117.

18  
19  
20  
21       **COUNT V – FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION**  
22                               **(U.S.C. § 1125(a))**

23           75. Best Western incorporates by reference the allegations contained in  
24 paragraphs 1 through 74 above as though fully set forth herein.

1           76. Defendants' unauthorized use of the Best Western Marks, including the  
2 use of the name "Western Inn & Suites," and the [www.atlantahotelbestwestern.com](http://www.atlantahotelbestwestern.com) domain  
3 name is or was likely to cause the public to believe, erroneously, that the Hotel and its  
4 services are or were sponsored by, endorsed by, or associated with Best Western.

5  
6           77. Defendants' operation and competition with Best Western through  
7 infringement of the Best Western Marks in connection with the Hotel constitutes a false  
8 designation of origin and unfair competition under 15 U.S.C. § 1125(a).

9           78. Defendants' conduct has caused Best Western to suffer immediate,  
10 irreparable, and continuous loss, including injury to its goodwill and reputation.

11           79. Upon information and belief, Defendants have undertaken the acts  
12 complained of herein willfully and with the intent to cause confusion, mistake, and deception  
13 on the part of the public.

14  
15           80. If Defendants are using the Best Western Marks unlawfully, unless  
16 restrained by this Court, they will continue to commit the foregoing acts of unfair  
17 competition.

18           81. Defendants' acts complained of have damaged Best Western irreparably.  
19 Monetary damages will not afford full and adequate relief for all of Best Western's injuries  
20 resulting from Defendants' conduct. Such injuries include harm to Best Western's goodwill  
21 and reputation in the marketplace that money cannot sufficiently compensate. Best Western  
22 is, therefore, requesting and entitled to a preliminary and permanent injunction restraining and  
23 enjoining Defendants and their respective officers, members, agents, servants, employees, and  
24 any other persons or entities acting on behalf of or in concert with Defendants, from using the  
25

1 Best Western Marks or any colorable imitation thereof, in connection with the promotion,  
2 advertisement, and sale of goods and services without Best Western's authorization, pursuant  
3 to 15 U.S.C. § 1116.

4 82. Defendants' acts of unfair competition are willful and entitle Best  
5 Western to recover damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117.  
6

7 **COUNT VI – FEDERAL TRADEMARK DILUTION – (15 U.S.C. § 1125(c))**

8 83. Best Western incorporates by reference the allegations contained in  
9 paragraphs 1 through 82 above as though fully set forth herein.  
10

11 84. Best Western has advertised and publicized the Best Western Marks  
12 extensively for decades throughout the United States, including the State of Arizona. As a  
13 result of their inherent distinctiveness and extraordinarily widespread use, the Best Western  
14 Marks have acquired a high degree of recognition and fame for hotel services.

15 85. Defendants' unauthorized post-termination use of the Best Western  
16 Marks in commerce began long after Best Western's Marks had already become famous  
17 throughout the United States, including the State of Arizona.  
18

19 86. Defendants' unauthorized post-termination use of the Best Western  
20 Marks or variations thereof is likely to cause dilution of the distinctive quality of the Best  
21 Western Marks.

22 87. Upon information and belief, Defendants have committed the acts  
23 complained of herein willfully and with the intent to trade on Best Western's reputation  
24 and/or to cause dilution of Best Western's famous Marks.  
25

1           88. Defendants' acts complained of have damaged Best Western irreparably.  
2 Monetary damages will not afford full and adequate relief for all of Best Western's injuries  
3 resulting from Defendants' conduct. Such injuries include harm to Best Western's goodwill  
4 and reputation in the marketplace that money cannot sufficiently compensate. Best Western  
5 is, therefore, requesting and entitled to a preliminary and permanent injunction restraining and  
6 enjoining Defendants and their respective officers, members, agents, servants, employees, and  
7 any other persons or entities acting on behalf of or in concert with Defendants, from using the  
8 Best Western Marks or any colorable imitation thereof, in connection with the promotion,  
9 advertisement, and sale of goods and services without Best Western's authorization, pursuant  
10 to 15 U.S.C. § 1116.  
11

12  
13           89. Defendants' acts of unfair competition are willful and entitle Best  
14 Western to recover damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117.

15           **COUNT VII – UNFAIR COMPETITION – ARIZONA LAW**

16           90. Best Western incorporates by reference the allegations contained in  
17 paragraphs 1 through 89 above as though fully set forth herein.  
18

19           91. Defendants' acts complained of herein constitute unfair competition  
20 under the laws of the State of Arizona.

21           92. Defendants have been unjustly enriched and have damaged Best  
22 Western's business, reputation, and goodwill.

23           93. Upon information and belief, Defendants' acts complained of herein  
24 were intentional, wanton, willful, guided by an evil hand and mind, and committed in bad  
25 faith and with the intent to confuse and deceive the public.

1           94. Defendants' acts complained of herein have caused Best Western  
2 irreparable harm for which there is no adequate remedy at law.

3                   **COUNT VIII – TRADEMARK DILUTION UNDER ARIZONA LAW -**  
4                   **(A.R.S. § 44-1448.01)**

5           95. Best Western incorporates by reference the allegations contained in  
6 paragraphs 1 through 94 above as though fully set forth herein.

7           96. The Best Western Marks are famous within the State of Arizona, and  
8 became famous in Arizona long before Defendants began using the marks.  
9

10          97. Defendants' acts complained of herein constitute commercial use of a  
11 mark or trade name that is likely to cause dilution of the distinctive quality of the famous Best  
12 Western Marks.

13          98. Defendants have undertaken these acts willfully and with the intent to  
14 trade on Best Western's reputation or to cause dilution of the Best Western Marks.  
15

16          99. Defendants' acts complained of herein caused, or are likely to cause,  
17 dilution to the famous Best Western Marks in violation of A.R.S. § 44-1448.01.

18          100. Defendants' acts complained of herein have caused irreparable harm and  
19 injury to Best Western's famous Best Western Marks, business reputation, and goodwill for  
20 which there is no adequate remedy at law.  
21

22                   **COUNT IX – TRADEMARK INFRINGEMENT UNDER ARIZONA LAW -**  
23                   **(A.R.S. § 44-1451)**

24          101. Best Western incorporates by reference the allegations contained in  
25 paragraphs 1 through 100 above as though fully set forth herein.

1           102. The Best Western Marks are famous within the State of Arizona, and  
2 became famous in Arizona long before Defendants began using the marks.

3           103. Despite that the Hotel is no longer affiliated with Best Western,  
4 Defendants, as of late February 2011, continued to display an Arizona registered trademark  
5 (Trademark No. 51370) in two places on its www.atlantahotelbestwestern.com website.  
6

7           104. Despite that the Hotel is no longer affiliated with Best Western,  
8 Defendants, as of March 16, 2011, continue to display a sign bearing a Best Western logo and  
9 representing that the Hotel is a Best Western member. See Exhibit 8. Additionally, upon  
10 information and belief, Department of Transportation highway signs continue to represent  
11 that the Hotel is a Best Western member.  
12

13           105. Defendants' acts complained of herein constitute commercial use of a  
14 mark or trade name and trademark infringement based on Arizona registered Trademark No.  
15 51370 in violation of A.R.S. § 44-1451.

16           106. Upon information and belief, Defendants have undertaken these acts  
17 willfully and with the intent to trade on Best Western's reputation and to cause confusion,  
18 mistake, and deception on the public.  
19

20           107. Defendants' acts complained of herein have caused irreparable harm and  
21 injury to Best Western's famous Best Western Marks, business reputation, and goodwill for  
22 which there is no adequate remedy at law.

23           **COUNT X – COMMON LAW TRADEMARK INFRINGEMENT**

24           108. Best Western incorporates by reference the allegations contained in  
25 paragraphs 1 through 107 above as though fully set forth herein.



109. Best Western has common law rights in the Best Western Marks through the use of the marks in commerce, such rights existing long before any use of the marks by Defendants.

110. Defendants' acts complained of herein constitute common law infringement of the Best Western Marks.

111. Upon information and belief, Defendants have undertaken these acts willfully and with the intent to trade on Best Western's reputation and to cause confusion, mistake, and deception on the public.

112. Defendants' acts complained of herein have caused irreparable harm and injury to Best Western's famous Best Western Marks, business reputation, and goodwill for which there is no adequate remedy at law.

### **PRAYER FOR RELIEF**

WHEREFORE, Best Western International, Inc. seeks judgment against Defendants, and each of them, jointly and severally, as follows:

A. With respect to Counts I and II:

The total of unpaid fees, which as of March 1, 2011, totals \$58,490.15, including interest at the rate of one and one-half percent (1.5%) per month until paid in full.

B. With respect to Count III:

1. Liquidated damages for breach of the Best Western Agreement in an amount equal to fifteen percent (15%) of the mean of the Hotel's room rates per day multiplied by the total number of rooms beginning December 16, 2010 (the sixteenth day

1 following termination of the membership) until Defendants cease and desist from the  
2 unlawful and unauthorized use of the Best Western Marks.

3                   2.     Beginning December 16, 2010, Defendants owed \$925.41 per day  
4 for each day they were unlawfully using the Best Western Marks.

5  
6                   C.     With respect to Counts IV through X:

7                   An order requiring Defendants to make an accounting of the profits  
8 derived by them by reason of their unlawful acts, holding Defendants liable to Best Western  
9 for such profits, and awarding Best Western its actual damages suffered as a result of the  
10 trademark infringement complained of against Defendants, in an amount to be proven at trial.

11  
12                   D.     With respect to Counts IV, V, and VI:

13                   An award of treble damages against Defendants pursuant to 15 U.S.C. §  
14 1117(b) or, alternatively, an award of liquidated damages to Best Western against Defendants  
15 calculated in the manner provided for in ¶ 24 of the Membership Agreement, whichever is  
16 greater.

17                   E.     With respect to such counts, as allowed by law, an award of special  
18 exemplary and/or punitive damages in an amount to be determined at trial.

19  
20                   F.     With respect to Counts III through X:

21                   1.     Temporary, preliminary and permanent injunctive relief enjoining  
22 Defendants and their respective officers, members, agents, servants, and employees, and any  
23 other persons and entities acting on behalf of or in concert with Defendants, to immediately  
24 and permanently remove all Best Western Marks as used on the premises of, or in reference  
25

1 to, the Hotel, including (without limitation) any internet websites, advertisements or any other  
2 display or item bearing any of the Best Western Marks.

3                   2.       Temporary, preliminary and permanent injunctive relief ordering  
4 Defendants to reimburse any costs incurred by Best Western to cause the removal of all Best  
5 Western Marks as used on the premises of, or in reference to, the Hotel, should Defendants  
6 fail to do so (in addition to whatever penalties the Court may impose upon Defendants for  
7 failing to comply with the Court's order to remove any infringing signs, displays, or items  
8 from the Hotel) within ten (10) days of the injunction.

9                   3.       Temporary, preliminary and permanent injunctive relief enjoining  
10 Defendants and their respective officers, members, agents, servants, and employees, and any  
11 other persons and entities acting on behalf of or in concert with Defendants, to immediately  
12 notify all advertisers, search engines, and providers of related services that Defendants are no  
13 longer affiliated with Best Western and are required to cause the cessation of all advertising  
14 and distribution of promotional material containing any of the Best Western Marks, any  
15 colorable imitation thereof, or any other confusingly similar marks.

16                   4.       Temporary, preliminary and permanent injunctive relief ordering  
17 Defendants to transfer the [www.atlantahotelbestwestern.com](http://www.atlantahotelbestwestern.com) domain name to Best Western  
18 and any other domain names that include a Best Western trademark.

19                   5.       Temporary, preliminary and permanent injunctive relief ordering  
20 Defendants to cease and desist using the name "Western Inn & Suites" and any other name  
21 that infringes upon the Best Western Marks and/or is likely to cause dilution of Best  
22 Western's trademarks.  
23  
24  
25

1           G.     With respect to all Counts:

2                     1.     Attorneys' fees and costs incurred herein against Defendants  
3 pursuant to the Membership Agreement, A.R.S. §§ 12-341 and 12-341.01, and/or 15 U.S.C. §  
4 1117(a), (or any other applicable law).

5  
6                     2.     For such other and further relief as the Court deems just and  
7 proper in the circumstances.

8                     DATED this 30th day of March, 2011.

9  
10                     CURTIS, GOODWIN, SULLIVAN,  
UDALL & SCHWAB, P.L.C.

11                     By: s/Michelle Swann  
12                             Michelle Swann  
13                             Kelly Y. Schwab  
14                             Melissa A. Parham  
15                             501 East Thomas Road  
16                             Phoenix, Arizona 85012-3205  
17                             Attorneys for Plaintiff

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**VERIFICATION**

STATE OF ARIZONA           )  
  )  
COUNTY OF MARICOPA       )

I, Cheryl Pollack, state as follows:

I am Director of Member Care and Development Administration of Best Western International, Inc. ("Best Western"). I am authorized by Best Western to execute this Verification. I am over the age of 18 and a resident of Maricopa County, Arizona. I have read the foregoing Verified Complaint and know its contents. The information contained in the foregoing Complaint is true and correct to the best of my knowledge and belief.

Cheryl Pollack  
Cheryl Pollack

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of February, 2011, by Cheryl Pollack.

Billie A. Hanson  
Notary Public

My Commission Expires: June 17, 2011

